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In The

Supreme Court of the United States

October Term, 1993

NATALIE HAAS STEFFEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES,

Petitioner,

vs.

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, AND CASSANDRA RIVERS,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Minnesota

BRIEF OF AMICUS CURIAE STATE OF CALIFORNIA IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

In its Petition for Writ of Certiorari, Minnesota presents the following questions:

1. Can a state, consistent with this Court's prior decisions on the right to travel, attempt to make the availability of welfare benefits a neutral factor in the decision of adults without minor children to move to the state by limiting public assistance benefits for the first six months to the higher of: (a) the amount of assistance received by the person in the previous state of residence, or (b) sixty percent of the benefits received by longer term residents?

2. If the answer to question 1 is in the negative, should the Court reconsider its prior right to travel decisions in order to establish an "undue burden" test consistent with the Court's approach to examining alleged violations of other fundamental rights?

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INTEREST OF AMICUS

California urges this Court to grant the Petition for Writ of Certiorari because California faces problems similar to those faced by Minnesota in implementing welfare reform.

In 1992, the State of California enacted a two tier system for the provision of certain public assistance benefits, California Welfare and Institutions Code section

11450.03 ("the California statute").[1] The operation of this statute is similar to the Minnesota statute in that the California statute provides that beginning December 1, 1992 (the date California implemented its statute after approval by the United States Secretary of Health and Human Services), new California residents will receive for a period of one year the same amount of Aid to Families with Dependent Children ("AFDC") benefits they received, or would have received, in the state of prior residence. After residing in California for one year, these new residents become eligible to receive the California level of benefits.

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[1] Section 11450.03 of the California Welfare and Institutions Code provides:

"(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

"(b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:

"(1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).

"(2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code)."

(Added by Stats. 1992, c. 722 (S.B. 485), § 37.5, eff. Sept. 15, 1992.)

As in Minnesota, the implementation of this much needed tool in the effort to provide welfare benefits to indigent California residents while protecting the interests of all California residents in maintaining a fiscally sound state government was halted by litigation. The United States District Court for the Eastern District of California, the Honorable David F. Levi presiding, granted a motion for preliminary injunction against the implementation of the California statute.

The district court stated that " . . . the Supreme Court of the United States, in what is now a large body of law, has made clear that the constitutionally based rights to migration and equal treatment do not permit significant distinctions between new and old residents based on the duration of their residency. Therefore the State may not deny certain of its residents full welfare benefits simply because of the recency of their residency." *Green v. Anderson*, 811 F.Supp. 516, 523 (E.D. Cal. 1993); (appeal pending).

The district court found that, under *Shapiro v. Thompson*, 394 U.S. 618 (1969), *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), and subsequent cases, "the two tier benefit schedule in § 11450.03 penalizes new residents because of the recency of their migration to the State." *Green, supra*, 811 F.Supp. at 523. The district court therefore subjected the California statute to strict scrutiny. *Id.* The court also determined upon review of the text and background of the statute that, "[s]tripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design." *Id.* at 522-23.

Because the California statute has much less impact on travel than the statutes at issue in *Shapiro* and *Memorial Hospital*, the District Court for the Eastern District of California erred in its conclusion that the California statute must be subjected to strict scrutiny. *Shapiro* does not mandate that the California statute be subjected to strict scrutiny.

Thus, the California statute has been declared unconstitutional on much the same grounds used by the Minnesota Supreme Court in declaring Minnesota's statute to be unconstitutional. California urges this Court to grant the Petition for Writ of Certiorari and again address the issues posed by residency requirements relating to the provision of public benefits.

JURISDICTION AND STATEMENT OF THE CASE

California adopts Minnesota's statement of jurisdiction and statement of the case.

SUMMARY OF ARGUMENT

California joins with Minnesota in asking this Court to grant the Petition for Writ of Certiorari. California has also been unable to implement a two tier system of distributing public assistance benefits based upon recency of migration to California. Even though California's statute does not have the same impact on travel as did the statutes at issue in *Shapiro* and its progeny, the United States District Court for the Eastern District of California

relied on *Shapiro* for its holding that the California statute should be subjected to strict scrutiny. California urges this Court to recognize that a carefully-crafted, two tier system for the provision of public assistance does not penalize the right to travel and does not subject such statutes to strict scrutiny.

Furthermore, the United States District Court for the Eastern District of California relied on *Shapiro* and its progeny in finding that a state's interest in reducing its welfare costs is not sufficient to justify a two tier system of distributing public benefits. California urges this Court to recognize that the severe fiscal crisis the individual states currently face is sufficient justification for implementation of a two tier system for the provision of public benefits.

ARGUMENT

I

CALIFORNIA'S STATUTE ALSO MAKES WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF PERSONS IMPACTED BY THE STATUTE WHO ARE CONSIDERING A MOVE TO A NEW STATE.

Both the Minnesota and the California statutes have a similar relationship to the right to travel. In both states, persons impacted by their state's respective statutes are placed in an identical position to that which they had when they departed their state of prior residence. The California statute does not provide for a penalty on the basic necessities of life, as persons subject to the California statute receive the same amount of AFDC benefits as

they did in their state of prior residence. The California statute simply provides for a delay in the right to receive the same level of benefits as persons who have lived in California for one year or more, thus making AFDC benefits a neutral factor in the decision of people considering a move to California.

Thus, the impact of the California statute is nothing like that which would result from the outright denial of eligibility for benefits such as that condemned in the statutes at issue in *Shapiro v. Thompson, supra,* 394 U.S. 618 and *Memorial Hospital v. Maricopa County, supra,* 415 U.S. 250. Unlike the statutes at issue in *Shapiro,* eligibility for public benefits is not at issue under the California statute. Similarly, the statute at issue in *Memorial Hospital* determined eligibility for free non-emergency medical care based upon length of residence. However, the United States District Court for the Eastern District of California incorrectly relied on those cases, and on subsequent cases, in holding that the California statute penalized the right to travel. (*Green, supra,* 811 F.Supp. 516 at 521.)

The Petition for Writ of Certiorari should be granted in order that this Court may recognize that a carefully-crafted, two tier system for the provision of public assistance does not penalize the right to travel and does not, thereby, subject such statutes to strict scrutiny.

II

CALIFORNIA ALSO URGES THIS COURT TO RECONSIDER *SHAPIRO* IF *SHAPIRO* COMPELS INVALIDATION OF A TWO TIER SYSTEM FOR THE PROVISION OF PUBLIC ASSISTANCE.

As did the Minnesota Supreme Court, the United States District Court for the Eastern District of California relied on *Shapiro* and its progeny in finding that California's interest in reducing welfare costs is not sufficient to justify a two tier system of distributing public benefits.

The United States District Court for the Eastern District of California was led to this finding, in part, as a result of its error in finding that the California statute must be subjected to strict scrutiny. However, as shown above, a strict scrutiny analysis is not proper because the California statute and similar two tier systems do not penalize the right to travel to the extent required to trigger a strict scrutiny analysis. Here, the correct analysis is the reasonable basis or rationality test. The Minnesota and California statutes pass that test. Such statutes are constitutional because the continuing and worsening budget problems facing the individual states provide a rational basis for statutes that reduce overall state welfare expenditures. These statutes, by themselves, will not solve the fiscal problems of high benefit level states such as California and Minnesota; however, these statutes are necessary and prudent fiscal measures to achieve a balanced budget.

This Court has previously found durational residency requirements to be constitutionally permissible if the justifications are sufficient. *Sosna v. Iowa* 419 U.S. 393,

406 (1975). In *Sosna*, Iowa's long-standing and virtually exclusive interest in regulating domestic relations justified the impact on travel of a statute that required a petitioner in a divorce action be an Iowa resident for one year preceding the filing of the petition. The plaintiff in *Sosna*, a petitioner in a divorce action, was not irretrievably foreclosed from obtaining some part of what she sought. The petitioner in the Iowa divorce action " . . . would eventually qualify for the same sort of adjudication which she demanded virtually upon her arrival in [Iowa]." *Sosna v. Iowa, supra*, 419 U.S. at 406. Similarly, under the California statute, a potential AFDC recipient coming to California still may apply for, and, if eligible, obtain assistance, but at a rate equal to what that potential recipient would have received in the state of prior residence. Under *Sosna*, Iowa's interest in regulating domestic relations justified the impact on travel of the Iowa statute. Similarly, a state's interest in maintaining a balanced budget is at least as important as a state's interest in regulating domestic relations.

Here, California's statute easily passes a rational basis test. At the time California attempted to implement its statute, California faced a budget deficit so severe that the state had no reserve available to cover the costs of unforseen events. Failure to implement California's statute was expected to result in additional, unbudgeted California State General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93, and 22.5 million dollars in fiscal year 1993-94.

This Court should grant the Petition for Writ of Certiorari in order to address the overwhelming fiscal crises confronting the states. The states must be allowed to

assert fiscal reasons to justify statutes implementing welfare reform. The principle that fiscal considerations alone are not sufficient to justify carefully-crafted residency requirements may have been reasonable during times of plenty but is no longer reasonable when California, as well as other states, is struggling to remain solvent.

CONCLUSION

The Petition for Writ of Certiorari should be granted. Minnesota is not alone in attempting to address the conflicts inherent in attempting to provide for all of its residents in a time of severely strained public resources. These issues are of utmost importance to California as well.

Dated: December 2, 1993

Respectfully submitted,

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